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ERICSSON INC.
6300 LEGACY DRIVE
M/S EVR 1-C-11
PLANO, TX 75024

| EXAMINER | |
|---|---|
| MILLS, DONALD L | |
| ART UNIT | PAPER NUMBER |
| 2462 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/556,656 | HUNDSCHEIDT ET AL. | |
| | Examiner | Art Unit | |
| | DONALD L. MILLS | 2462 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *01 July 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Information Disclosure Statement*

**1.** The information disclosure statement filed 12 November 2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication (in particular, "Multimedia Multi-Network: A new Concept Multi-reseaux Multimedia: Un Nouveau Concept") or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

**2.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**3.** Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishi (US 2001/0027484 A1).

Regarding claims 1, 9, 13, and 12, Nishi discloses a quality assured network service provision system compatible with a multi-domain network and service provision method and service broker device, which comprises:

*Receiving or defining a service level agreement in a service level specification, distributing the service level specification to the first and the second network entity by means of partitioning or by means of replication; and Controlling the first and the second network entity and thus ensuring that the sum of the provided quality of service on said connections between the two communication partners does not exceed limits defined in the service level specification* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, the bandwidth broker 23 ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049. The service level agreement management device 231 registers the service information agreed upon between the providers in the service level agreement storage section 221, and also manages such information. Furthermore, the service level agreement management device 231 also provides an interface for registering, editing and deleting service level agreement information input via the output device 21. See paragraph 0051. The workflow server 24, like the bandwidth broker 23, is a system with a function for processing data which is operated by program control, and is connected to the bandwidth broker 23, the customer care server 25, the design server 27, the policy server 26, and the network management device 28 respectively. The workflow server 24 sends the necessary processing commands to each server and manages the progress of the commands in accordance

with a workflow and an operation flow defined by the provider. See paragraph 0054 and 0058-0060.)

Regarding claim 2, Nishi disclose *wherein the step of controlling is performed by a control node that is connected to the first and second network entity* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, the bandwidth broker 23 is connected to the network cluster and ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049.)

Regarding claim 3, Nishi discloses *wherein at least one of said first and second network entities is connected to and adapted to be controlled by more than one control node and the control node can control more than one network entity* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, the bandwidth broker 23 is connected to the network cluster and ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049.)

Regarding claim 4, Nishi discloses *wherein in case of partitioning the first network entity handles a first kind of service requests and the second network entity handles a second kind of service requests* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices which may handle many unique service requests, the bandwidth broker 23 is connected to the network cluster and ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049.)

Regarding claims 5, 11, and 14, Nishi discloses *wherein in case of replication each of the first and the second network entities handles up to a certain share of the quality of service permitted by the service level agreement* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, the bandwidth broker 23 ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049. The service level agreement management device 231 registers the service information agreed upon between the providers in the service level agreement storage section 221, and also manages such information. Furthermore, the service level agreement management device 231 also provides an interface for

registering, editing and deleting service level agreement information input via the output device 21. See paragraph 0051. The workflow server 24, like the bandwidth broker 23, is a system with a function for processing data which is operated by program control, and is connected to the bandwidth broker 23, the customer care server 25, the design server 27, the policy server 26, and the network management device 28 respectively. The workflow server 24 sends the necessary processing commands to each server and manages the progress of the commands in accordance with a workflow and an operation flow defined by the provider. See paragraph 0054 and 0058-0060.)

Regarding claims 6, 10, and 15, Nishi discloses *wherein a network entity is an edge node* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, including edge devices, the bandwidth broker 23 ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049.)

Regarding claim 7, Nishi discloses *wherein a control node is a bandwidth broker* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, including edge devices, the bandwidth broker 23 ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level

agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049.)

Regarding claim 8, Nishi discloses *wherein the bandwidth broker communicates to edge nodes by using multicasting* (Referring to Figures 1-3, bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster comprising multiple devices, in which multiple devices are communicated with equivalent to mullticasting, the bandwidth broker 23 ensures that devices with the network cluster do not exceed their service level agreements. The bandwidth broker 23 comprises an external system communication device 233, a security management device 234, a service level agreement management device 231, a domain route management device 232, and an internal system communication device 235. See paragraph 0049.)

***Response to Arguments***

**4.** Applicant's arguments filed 01 July 2009 have been fully considered but they are not persuasive. The Examiner corrected the typographically error referring to Rao, the claim rejections now correctly referred to the cited prior art of Nishi.

Rejection Under 35 USC 102

On page 7 of the remarks regarding claims 1, 9, 13, and 12, the Applicant argues Nishi does not disclose *the sum of the provided quality of service on said connections between the two communication partners does not exceed limits* with regards to *at least two connections.* The Examiner respectfully disagrees. Nishi discloses bandwidth broker 23 is a system with a data processing function operated by program control for managing services in a network cluster

comprising multiple devices, and hence multiple connections, the bandwidth broker 23 ensures that devices with the network cluster do not exceed their service level agreements. See paragraph 0054 and 0058-0060. The Examiner interprets the claims as relating to the typical prior art system of managing bandwidth across multiple connections, comprising systems with at least two connections, according to service level agreements. Therefore Nishi discloses restricting the ability of several connections to exceed their service level agreements. The applicant appears to take an overly narrow construction of the claims; however, claims are read in the broadest literal reasonable manner. Should the applicant intend for a more specific interpretation of the claims, the claims should be amended to reflect such as intention. However, the instant claims fail to recite any structural or functional limitations which would differentiate the claims from the prior art of record.

***Conclusion***

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DONALD L. MILLS whose telephone number is (571)272-3094. The examiner can normally be reached on 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Donald L Mills/
Primary Examiner, Art Unit 2462